

Introduced by Senator Cedillo

February 22, 2008

An act to amend Section 1192.9 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1756, as introduced, Cedillo. Insurance: excess investment.

Existing law permits a domestic insurer to make excess funds investments in shares of an investment company, as specified.

This bill would make a technical, nonsubstantive change to this provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1192.9 of the Insurance Code is amended
2 to read:
3 1192.9. Notwithstanding Section 1100, ~~a domestic insurer~~
4 ~~insurers~~ may make excess funds investments in shares of an
5 investment company, as defined in the Federal Investment
6 Company Act of 1940, if the requirements of subdivisions (b) and
7 (c) are satisfied. No investment made pursuant to this section that
8 ceases to satisfy the requirements of subdivision (b) or (c) shall
9 be retained as an excess fund investment. No domestic insurer
10 shall invest under any provision of this code in the shares of any
11 investment company which has more than 33.33 percent of its
12 investments in foreign investments that do not comply with
13 paragraph (4) of subdivision (b).

1 (a) The definitions in this subdivision apply to the following
2 terms when used in this section:

3 (1) A mutual fund is an open-end management company as
4 defined in Section 5(a)(1) of the Federal Investment Company Act
5 of 1940 (15 U.S.C. Sec. 80(a)-5(a)(1)).

6 (2) An exchange traded fund is either an open-ended
7 management company as defined in Section 5(a)(1) of the Federal
8 Investment Company Act of 1940, or a unit investment trust as
9 defined in Section 4(2) of the Federal Investment Company Act
10 of 1940 (15 U.S.C. Sec. 80a-4(1)), that is registered under the
11 Federal Investment Company Act of 1940 and that satisfies the
12 terms of exemptive orders issued by the United States Securities
13 and Exchange Commission which qualify it to be an
14 exchange-traded fund.

15 (3) A fund is any investment company authorized in this section
16 as an excess fund investment.

17 (b) The investment company shall:

18 (1) Be registered with and reporting to the United States
19 Securities and Exchange Commission.

20 (2) Be domiciled in the United States with all assets held in the
21 United States by a bank, trust company, or other authorized
22 custodian chartered by the United States, its territories, possessions,
23 or states.

24 (3) Have assets in excess of one hundred million dollars
25 (\$100,000,000), or be affiliated with other investment companies
26 that have, in the aggregate, assets in excess of one billion dollars
27 (\$1,000,000,000).

28 (4) Have at least 66.67 percent of its investments be investments
29 that are authorized under Article 3 (commencing with Section
30 1170) and Article 4 (commencing with Section 1190), except that
31 any amount of a fund's assets may consist of investments in foreign
32 countries that are substantially of the same kinds, classes, and
33 investment grade as those eligible for investment under this code,
34 but if more than 50 percent of its total investments consist of those
35 foreign investments, then the insurer's investment in that fund
36 shall comply with the provisions of subparagraph (C) of paragraph
37 (1) of subdivision (c), notwithstanding any other provision of this
38 section or this code.

39 (5) Have at least 36 months of active investment history.

1 (6) Issue its shares as fully paid and nonassessable, with no
2 preemptive, conversion, or exchange rights.

3 (7) Issue its shares to the insurer or to the insurer's custodian,
4 subcustodian, or depository designated pursuant to Section 1104.9,
5 or have its shares be retained by a bank, trust company, or other
6 entity other than the investment company which is authorized by
7 the United States to act as a transfer and dividend paying agent
8 for the investment company.

9 (8) Provide equal rights and privileges to each share within the
10 same class or series, and entitle each share within its class or series
11 to vote and to participate equally in dividends and distributions
12 declared by the investment company and in the net distributable
13 assets of the investment company on liquidation.

14 (9) If it is a mutual fund, entitle shareholders to require the
15 investment company to redeem all shares.

16 (10) If it is an exchange-traded fund, all of its shares are both
17 of the following:

18 (A) Registered under the Federal Securities Act of 1933.

19 (B) Either listed and traded on a national securities exchange
20 registered under the Securities Exchange Act of 1934 or have
21 prices ascertained by quotations furnished through a nationwide
22 automated quotations system approved by the National Association
23 of Securities Dealers, Inc.

24 (11) Have no investment policies that authorize any of the
25 following:

26 (A) Borrowings to exceed $33\frac{1}{3}$ percent of its total assets.

27 (B) The aggregate notional value of its derivative instruments
28 outstanding to exceed 10 percent of its total assets.

29 (C) Investment in commodities or direct ownership of real estate.

30 (12) Have an expense ratio that does not exceed the following
31 amounts of its average daily net asset values:

32 (A) For a money market fund, 100 basis points.

33 (B) For a bond fund, 200 basis points.

34 (C) For a stock or mixed stock/bond fund, 300 basis points.

35 (c) An insurer shall do the following:

36 (1) At no time make or retain an excess fund investment under
37 the authority of this section that exceeds the following limits:

38 (A) An amount of its admitted assets, as reported in its most
39 recent annual statement, that is more than any of the following:

1 (i) Three percent in a single investment company or 7 percent
2 in an affiliated group of investment companies.

3 (ii) Twenty-five percent in all investments authorized by this
4 section.

5 (B) One hundred percent of its surplus as regards policyholders,
6 as reported in its most recent annual statement, in all investments
7 authorized by this section.

8 (C) For an investment in a fund which has more than 50 percent
9 of its assets in investments in foreign countries that are substantially
10 of the same kinds, classes, and investments eligible under this
11 code, subdivision (a) of Section 1241 applies. However, an insurer
12 described in subdivision (i) of Section 1241.1 may also include
13 the investment within the limits specified in that subdivision. No
14 insurer shall invest in any such fund pursuant to any other provision
15 of this code.

16 (D) An investment in any single investment company that
17 exceeds 10 percent of the total net asset value of that investment
18 company.

19 (2) Make a specific determination, pursuant to Sections 1200
20 and 1201, that an investment company has stated investment
21 policies that are suitable for the insurer's investment objectives.

22 (d) In addition to any other remedies available under this code
23 for any violation of this section, the commissioner may, after giving
24 an insurer notice and an opportunity to be heard, deny credit in
25 any financial statement filed with the commissioner for all or any
26 part of an investment in an investment company, even if it
27 otherwise complies with this section, if he or she finds the
28 investment to be unsound or hazardous.

29 The grounds for finding an investment unsound or hazardous
30 may include, but are not limited to, the following determinations:

31 (1) The investment company's investment adviser or subadviser
32 lacks sufficient investment experience to render reliable investment
33 advice; or lacks good professional character or good standing with
34 any securities licensing authorities having jurisdiction over them.

35 (2) The portfolio turnover rate of the investment company is
36 excessive in relation to its investment goals.

37 (3) The investment company's annual investment management
38 fee, or other fees or charges incurred by the investment company
39 or the insurer, are not reasonable when compared to charges or
40 fees associated with similar investment companies.

- 1 (4) An investment company fails to mirror substantially any
- 2 security index upon which its stated investment policy is based.

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